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E-FILED: 9/25/09

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In Re:	)	Case No. BKS-09-26652-LBR
	)	Chapter 13
<b>WALTER WILLIAM PANAMENO</b>	)	
<b>ZOILA ELIZABETH PANAMENO</b>	)	Hearing Date: October 29, 2009
Debtor(s).	)	Hearing Time: 2:30 PM
	)	
	)	Trustee: Rick Yarnall
	)	
	)	

MOTION TO VALUE COLLATERAL, "STRIP OFF" AND MODIFY RIGHTS OF  
WELLS FARGO BANK TO 11 U.S.C. §506(a) AND §1322

Debtor, WALTER WILLIAM PANAMENO and ZOILA ELIZABETH PANAMENO, by and through attorney Michael S. Terry, Esq. of the Law Offices of Barry Levinson, hereby move this Court for its Order valuing collateral and modifying the rights of Creditor WELLS FARGO BANK pursuant to 11 U.S.C. §506(a), and §1322, and Bankruptcy Rules 3012 and 9014. In furtherance of this motion, Debtor states as follows:

1. Debtor filed the above captioned Chapter 13, Case Number 09-26652-LBR on September 4, 2009.
2. On the petition date, Debtor owned real property located at 2016 Madagascar Lane, Las Vegas, Nevada 89117, legally described as:  
SIGNATURE AT PECCOLE RABCH UNIT A Plat Book 46 Page 58 Lot 1 Block 1  
APN 163-06-412-022, (hereinafter the "Property").

3. The value of the Property was \$343,500.00 as of the petition date. See ZILLOW.COM attached hereto as Exhibit "A".
4. As of WELLS FARGO BANK securing a note with a principal balance of \$429,957.00.
5. As of the petition date, no equity existed in the Property above the claim of WELLS FARGO BANK with respect to the First Trust Deed.
6. WELLS FARGO BANK holds a Second Trust Deed securing a note with a principal balance of \$85,839.00. This Second Trust Deed was wholly unsecured on the petition date and if the Property were to be sold at auction, WELLS FARGO BANK would receive nothing with respect to the Second Trust Deed.
7. The Debtor therefore takes the position that WELLS FARGO BANK's note secured by Second Trust Deed is unsecured and should be reclassified as a general unsecured claim to receive pro rata with other general unsecured creditors through the Debtors' Chapter 13 Plan.

## **LEGAL ARGUMENT**

In *In re Zimmer*, 313 F.3d 1220 (9<sup>th</sup> Cir. 2002), the Court stated that a wholly unsecured lien holder's claim can be modified and reclassified as a general unsecured claim pursuant to 11 U.S.C. §506(a), despite the anti-modification language in §1322(b)(2). Specifically, the Court held:

Section 506(a) divides creditors' claims into "secured...claims" and "unsecured claims." Although the conventional interpretation of "secured" might include any claim in which the creditor has a security interest in the debtor's property, § 506(a) makes clear that the status of a claim depends on the valuation of the property. An allowed claim of a creditor secured by a lien on property in which the estate has an interest ... is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property ... and is an unsecured claim to the extent that the value of such creditor's interest ... is less than the amount of such allowed claim ...

To put it more simply, a claim such as a mortgage is not a "secured claim" to the extent that it exceeds the value of the property that secures it. Under the Bankruptcy Code, "secured claim" is thus a

term of art; not every claim that is secured by a lien on property will be considered a "secured claim." Here, it is plain that PSB Lending's claim for the repayment of its loan is an unsecured claim, because its deed of trust is junior to the first deed of trust, and the value of the loan secured by the first deed of trust is greater than the value of the house.

Since WELLS FARGO BANK'S Trust Deed is wholly unsecured (in that there is no equity above the first mortgage in the Property), this Court should reclassify WELLS FARGO BANK'S second mortgage claim to a general unsecured claim to be receive pro rata with like unsecured creditors. WELLS FARGO BANK should also be stripped of its secured rights under State law and the recorded Second Trust Deed should be expunged from the county records to give effect to this Court's order.

Moreover, Debtor may bring a motion to "strip off" WELLS FARGO BANK Second Trust Deed and is not required to file an adversary proceeding. See *In re Williams*, 166 B.R. 615 (Bankr.E.D.Va.1994), *In re Fuller*, 255 B.R. 300 (Bankr.W.D.Mich.2000), *In re Hoskins*, 262 B.R. 693 (Bankr.E.D.Mich.2001), *In re King*, 290 B.R. 641 (Bankr.C.D.Ill.2003), *In re Millspaugh*, 302 B.R. 90 (Bankr.D.Idaho 2003), *Dickey v. Ben. Fin. (In re Dickey)* 293 B.R. 360 (Bankr.M.D.Pa.2003), *In re Hill*, 304 B.R. 800 (Bankr.S.D.Ohio 2003); *In re Sadala* 294 B.R. 180 (Bankr.M.D.Fla.2003), *In re Fisher*, 289 B.R. 544 (Bankr.W.D.N.Y.2003), *In re Robert*, 313 B.R. 545 (Bankr.N.D.N.Y.2004), *In re Bennett*, 312 B.R. 843 (Bankr.W.D.Ky.2004).

WHEREFORE, Debtor prays that this Court:

1. Find that WELLS FARGO BANK is not a holder of a lien on the Property with respect to the Second Trust WELLS FARGO BANK wholly unsecured Second Trust Deed from the Property pursuant to 11 U.S.C. Section 506(a);

2. Reclassify WELLS FARGO BANK claim as a general unsecured claim to be paid pro rata with other general unsecured creditors through the Debtor's chapter 13 plan;

3. Such other relief the Court finds appropriate.

Dated: SEPTEMBER 25, 2009

/s/ Michael S. Terry, Esq.  
Michael S. Terry, Esq.  
Attorney for Debtor(s)

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# EXHIBIT A

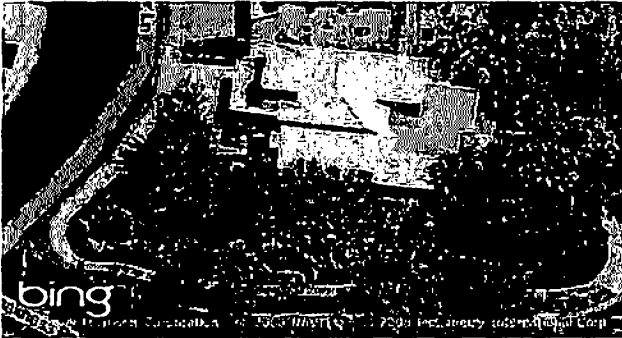
**2016 Madagascar Ln**

Las Vegas NV 89117

5 beds, 3.5 baths, 3,107 sq ft

**Zestimate®: \$343,500**[Thinking of selling?](#)**My Estimate:****Monthly Payment: \$ 1,464 edit**

Check Your Credit Score for \$0

**Bird's Eye View**

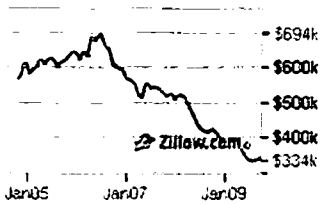
See a

**Home Info****Public Facts:**

- Single family
- 5 beds
- 3.5 bath
- 3,107 sqft
- Lot 11,325 sqft
- Built in 1990

**Neighborhood: The Lakes****Nearby Schools:****District:**[Clark](#)**Primary:**[Clarence Piggott ...](#)**Middle:**[Sig Rogich Middle ...](#)**High:**[Palo Verde High Scho ...](#)[See more The Lakes local information](#)[See more The Lakes schools](#)**Charts & Data**

Work with an agent from



See all charts & data

**ZESTIMATE®: \$343,500**

Value Range: \$278,235 -

\$381,285

30-day change: \$8,500

Zestimate updated: 09/23/2009

#### Last sale and tax info

**Sold 07/20/2004:**

\$550,000 \*

**2009 Property Tax:**

\$3,241

\* Transaction not included in

Zestimate. [More info](#)

: 78 - Very Walkable

**Prudential Americana Group,  
REALTORS to come up with a  
selling price.**

First Name\*

Last Name\*

Email Address\*

Phone Number\*

( ) - ext.

I am\*

**Please Choose One** : ⌵

Message (optional)

**Or call (888) 321-0667**



#### Street Map

**2016 Madagascar Lane, Las Vegas, NV**

Bird's eye view and larger map for 2016 Madagascar Ln

Edit map location for 2016 Madagascar Ln

#### Alternate Addresses

2016, madagascar, ln, la, lane, lane s, lanes, lakes, lake s, lake so,  
lake south, lakes, lakeso, lakesouth, lk s, lk so, lk south, lks, lkso,  
lksouth, las vegas, las vega s, las vega so, las vega south